

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

ANTHONY WRIGHT,

Petitioner,

vs.

JAMES SALMONSEN, ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Defendants.

CV 18-66-BU-BMM-JCL

**ORDER ADOPTING MAGISTRATE
JUDGE'S FINDINGS AND
RECOMMENDATIONS**

Petitioner Anthony Wright filed a petition seeking a writ of habeas corpus under 28 U.S.C. §2254 on October 19, 2018 (Doc. 1.) Wright alleges that the 4-year prison sentence he received on April 6, 2018, in Montana's Second Judicial District, Silver Bow County, for Assault on a Peace Officer, violates his Eight Amendment right to be free from cruel and unusual punishment because he did not receive proper credit for the time her served before sentencing. *Id.*

Wright was arrested for driving under the influence in Butte, Montana on June 29, 2014. (Doc. 4 at 2.) During transportation to the detention center, Wright assaulted an officer. *Id.* Wright was released in August of 2014. *Id.*

Wright was convicted of Assault in Oregon in March of 2015. *Id.* He remained in custody in Oregon until September 21, 2017. *Id.* That same day, Wright was arrested for violating the conditions of his release on the earlier Montana assault charge pursuant to a detainer and was returned to Montana where he remained in custody until his sentencing on April 5, 2018. *Id.* At sentencing, Wright was awarded 251 days of jail credit for his time served in Montana. *Id.* at 3. Following his sentencing, Wright filed a petition for habeas relief in the Montana Supreme Court, arguing that he was entitled to more credit than the 251 days granted to him. *Id.* The Montana Supreme Court determined that Wright was not due any additional credit for the Oregon incarceration because it was unrelated to his Montana sentence and conviction. *Id.*

Judge Johnston issued Findings and Recommendations in this matter on October 23, 2018 (Doc. 4). Judge Johnston determined that Wright's claims that the Montana courts erred in the application of state law is not cognizable in federal habeas. *Id.* Judge Johnston further determined that Wright's alleged denial of credit for time served is similarly not cognizable because Wright's sentence was well within the statutory parameters. *Id.* at 4. Accordingly, Judge Johnston determined that Wright's sentence does not violate the Eight Amendment. *Id.* at 5. Finally, Judge Johnston recommended that a certificate of appealability be denied because

Wright had not made a substantial showing that he was deprived of a constitutional right.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

IT IS ORDERED that Judge Johnston's Findings and Recommendations (Doc. 14), are **ADOPTED IN FULL**. Wright's petition (Doc. 1) is **DENIED** on the merits. The Clerk of Court is directed to enter judgment in favor of Respondents and against Petitioner. Finally, a certificate of appealability is **DENIED**.

DATED this 13th day of November, 2018.



Brian Morris
United States District Court Judge